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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/672,402

09/29/2003

Helmut Grollitsch

1523-5

9151

7590

04/04/2007.

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EXAMINER

HAGEMAN, MARK

ART UNIT

PAPER NUMBER

3653

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

04/04/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/672,402

Applicant(s)

GROLLITSCH ET AL.

Examiner

Mark Hageman

Art Unit

3653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213:

**Disposition of Claims**

- 4) ☒ Claim(s) 22-51 is/are pending in the application.
- 4a) Of the above claim(s) 22-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 39-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 46-51 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 0043170 to Mooij. Mooij discloses forming a frame having a conveyor thereon (1 and p4 lines 15+; placing a plurality of cases on said conveyor, each of said plurality of cases having an open side and a closed side with a plurality of walls extending therebetween (2, 16 and p4 lines 16+); moving said plurality of cases in a direction on said conveyor (p4 lines 16+); fixing a position of one of said plurality of cases on said conveyor (p4 lines 26+); applying a force against one of said plurality of walls such that the wall deflects (p3 lines 15+; determining whether the deflection is beyond a desired amount (p3 lines 20+ and p6 lines 15+); and ejecting the case directly from said conveyor when the deflection of the wall is beyond the desired amount (p5 lines 25+).

-Re claim 47 positioning a surface of a ram against the wall of the case; and actuating said ram such that said surface of said ram urges against the wall of the case (p2 lines 9+).

-Re claim 48 sensing an amount of movement of said surface of said ram (p 6 lines 15+).

Art Unit: 3653

-Re claim 49 said ram having a pneumatic cylinder mounted in a fixed position, said ram having a piston extending outwardly of said cylinder, said ram having an arm pivotally connected to said piston, said step of actuating the ram comprising: retracting said piston within said cylinder such that said arm pivots outwardly, said arm having said surface thereon urging against the wall (figure 4 and p5 lines 31+).

-Re claim 50 said step of fixing the position comprising: actuating a pneumatic ram such that a piston of the ram extends through said open side and abuts one of said plurality of walls so as to stop a movement of the case relative to said conveyor (figure 4).

-Re claim 51 applying another force against said closed side of said case, such that said closed side deflects; and determining whether the deflection of said closed side is beyond a predetermined limit (p6 lines 12+).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 39-42, 44, 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mooij in view of GB 2052765 to Auer. Mooij discloses a frame (figure 1); a conveyor means mounted on said frame (18), said conveyor means for moving the case along said frame (2 figure 1); a first ram means affixed to said frame, said first ram

Art Unit: 3653

means for applying a force onto a surface of a wall of the case (p2 lines 9+); a second ram means affixed to said frame and positioned in a different location on said frame from said first ram means, said second ram means for applying a force onto another surface of the case (figure 4), said second ram means comprising a pneumatic ram having a cylinder affixed to said frame and a piston extending outwardly of said cylinder, said piston being movable between a first position and a second position relative to said cylinder, said first position positioning said piston away from said another surface of the case, said second position urging against said another surface of the case (p6 line 12+), said piston having a curved surface positioned at an end of said piston opposite said cylinder (31 and p6 lines 4+; a sensor means (21) cooperative with said ram means, said sensor means for detecting when the surface of the wall of the case has deflected beyond a desired amount; and an ejection means (24, p2 lines 9+, and p5 lines 25+) affixed to said frame and cooperative with said sensor means for ejecting the case directly from said conveyor means when the wall of the case has deflected beyond the desired amount. Mooij does not disclose the rejection means comprising a ram having a cylinder affixed to said frame, said pneumatic ram having a piston extending outwardly therefrom, said piston being movable between a first position and a second position relative to said cylinder, said first position causing said piston to be positioned away from the case on said conveyor means, said second position urging against the case on said conveyor means so as to separate the case from said conveyor means. Auer discloses a transfer means comprising a ram (12) having a cylinder (10) affixed to said frame, said pneumatic ram having a piston extending outwardly therefrom, said

Art Unit: 3653

piston being movable between a first position and a second position relative to said cylinder, said first position causing said piston to be positioned away from the case on said conveyor means, said second position urging against the case on said conveyor means so as to separate the case from said conveyor means (p2 lines 13+) for the purpose of displacing an item relative to the conveyor and therefore removing it (p2 lines 18+).

It would have been obvious to one ordinary skill in the art at the time of applicant's invention to have modified Mooij to include the rejection means comprising a ram having a cylinder affixed to said frame, said pneumatic ram having a piston extending outwardly therefrom, said piston being movable between a first position and a second position relative to said cylinder, said first position causing said piston to be positioned away from the case on said conveyor means, said second position urging against the case on said conveyor means so as to separate the case from said conveyor means, as taught by Auer, for the purpose of displacing an item relative to the conveyor and therefore removing it.

-Re claim 40 Mooij further discloses said first ram means comprising:  
a pneumatic ram (figure 4) having a cylinder (28) affixed to said frame, said pneumatic ram having a piston extending outwardly therefrom; and an arm (25) pivotally connected to said piston and pivotally connected to said frame (fig 4).

-Re claim 41 Mooij discloses said piston being movable between a first position and a second position relative to said cylinder, said first position causing said arm to be positioned away from the wall of the case, said second position urging the wall of the

case outwardly (fig 4, p5 lines 31+).

-Re claim 42 Mooij discloses a sensor means connected to said cylinder and cooperative with said piston, said sensor means for determining when said second position is beyond a desired limit of movement (p6 lines 15+).

-Re claim 44 Mooij discloses a positioning means (17) affixed to said frame, said positioning means for fixing a position of the case relative to said frame.

-Re claim 45 Mooij discloses a separating means (5, 1) affixed to said frame in spaced relation to said positioning means, said separating means for spacing another case from the case on the conveyor means when said positioning means fixed the position of the case.

5. Claim 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mooij in view of Auer as applied to claims 39-42, 44, 45 above, and further in view of US 5,528,925 to Sherepa. Mooij in view of Auer discloses all the limitations of the claim except the curved surface being a roller rotatably positioned at one end of said piston opposite said cylinder. Sherepa discloses the curved surface being a roller (66) rotatably positioned at one end of said piston opposite said cylinder. (66, fig 4a and 4b) for the purpose of allowing relative motion between the wheel or curved surface (66) and the container (c3 lines 62+).

It would have been obvious to one of ordinary skill in the art at the time of the applicants invention to have modified Mooij in view of Auer to include the wheel (66) as

the curved surface, as taught by Sherepa, for the purpose of allowing relative motion between the wheel or curved surface (66) and the container (c3 lines 62+).

### ***Response to Arguments***

6. Applicant's arguments filed 1-15-2007 have been fully considered but they are not persuasive. Regarding the Mooij reference applicant stated that the reference, "fails to provide for the ejection of the crate from the conveyor once the crate fails the testing." Examiner disagrees in that Mooij discloses that crates that fail testing are considered rejects and that the rejects are removed by a delivery arrangement (24, p5 lines 25-29). The fact that the rejected crate is replaced by a good crate is not of importance but rather the fact that the rejected crate is ejected or removed based upon the fact it failed testing. Other arguments presented are moot in view of the new grounds of rejection.

### ***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the



Art Unit: 3653


shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Hageman whose telephone number is (571) 272-3027. The examiner can normally be reached on M-F 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Mackey can be reached on (571) 272-6916. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MCH



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